

# HOUSE BILL No. 1774

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.5; IC 8-14-10; IC 8-14.5; IC 8-14.6; IC 8-23-3-11.

**Synopsis:** Bonds for highways and local roads. Authorizes the transportation finance authority to issue bonds or notes secured by lease rentals relating to highway improvement projects and anticipated to be paid from receipt in the current federal fiscal year or a future federal fiscal year of federal transportation revenues. Limits the total amount of the lease rentals securing those bonds or notes during any state fiscal year to 50% of the increase in the amount of federal transportation revenues received by the state since the federal fiscal year ending September 30, 2004. Authorizes the transportation finance authority to issue bonds or notes for local road projects that are secured by lease rentals payable by cities, towns, and counties. Provides that when issuing the bonds or notes, the authority is subject to certain rules concerning minority and women's business participation.

**Effective:** July 1, 2005.

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**Bauer, Van Haaften**

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January 19, 2005, read first time and referred to Committee on Ways and Means.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1774

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.5-4-12 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. In the case of a  
3 county that contains a consolidated city, the city-county council may  
4 appropriate money derived from the surtax to:

5 (1) the department of transportation established by IC 36-3-5-4  
6 for use by the department under law; **or**

7 (2) **the Indiana transportation finance authority for the**  
8 **payment of lease rentals under IC 8-14.6.**

9 The city-county council may not appropriate money derived from the  
10 surtax for any other purpose.

11 SECTION 2. IC 6-3.5-4-13 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) In the case of a  
13 county that does not contain a consolidated city of the first class, the  
14 county treasurer shall deposit the surtax revenues in a fund to be known  
15 as the "\_\_\_\_\_ County Surtax Fund".

16 (b) Before the twentieth day of each month, the county auditor shall  
17 allocate the money deposited in the county surtax fund during that



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month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county surtax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the surtax revenues it receives under this section to:

(1) construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; **or**

**(2) provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

SECTION 3. IC 6-3.5-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the wheel tax to:

(1) the department of transportation established by IC 36-3-5-4 for use by the department under law; **or**

(2) an authority established under IC 36-7-23; **or**

**(3) the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

(b) The city-county council may not appropriate money derived from the wheel tax for any other purpose.

SECTION 4. IC 6-3.5-5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) In the case of a county that does not contain a consolidated city, the county treasurer shall deposit the wheel tax revenues in a fund to be known as the "County Wheel Tax Fund".

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county wheel tax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county wheel tax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the wheel tax revenues it receives under this section:

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(1) to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction; ~~or~~

(2) as a contribution to an authority established under IC 36-7-23;   
or

**(3) to provide funds to the Indiana transportation finance authority for the payment of lease rentals under IC 8-14.6.**

SECTION 5. IC 8-14-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The department may use the money in the fund only to pay the following costs:

(1) The cost of construction or reconstruction of a state highway.

(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a state highway, including the cost of any relocations incident to the acquisition.

(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a state highway.

(4) Engineering and legal expenses, and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

(5) Payment of rentals and performance of other obligations under contracts or leases ~~relating to projects~~ **securing bonds issued under IC 8-14.5. IC 8-14.5-6.**

SECTION 6. IC 8-14-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The crossroads 2000 fund is established for the purpose of constructing or reconstructing state highways. The crossroads 2000 fund consists of distributions received under IC 9-29-1-2, IC 9-29-15-1, IC 9-29-15-3, and IC 9-29-15-4.

(b) The crossroads 2000 fund shall be administered by the department. The treasurer of state shall invest the money in the crossroads 2000 fund not currently needed to meet the obligations of the crossroads 2000 fund in the same manner as other public funds may be invested.

(c) Money in the crossroads 2000 fund at the end of a state fiscal year does not revert to the state general fund.

(d) The department may use the money in the crossroads 2000 fund only to pay the following costs:

(1) The cost of construction or reconstruction of a state highway.

(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests

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acquired by the department for the construction or reconstruction of a state highway, including the cost of any relocations incident to the acquisition.

(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a state highway.

(4) Engineering and legal expenses, and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.

(5) Payment of rentals and performance of other obligations under contracts or leases relating to projects securing bonds issued under ~~IC 8-14.5~~ IC 8-14.5-6.

SECTION 7. IC 8-14-10-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10. (a) The grant anticipation fund is established to construct and reconstruct state highways. The grant anticipation fund consists of distributions of federal transportation revenues (as defined in IC 8-14.5-7-1) made under IC 8-23-3-11.**

**(b) The grant anticipation fund shall be administered by the department. The treasurer of state shall invest the money in the grant anticipation fund not currently needed to meet the obligations of the grant anticipation fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the grant anticipation fund.**

**(c) Money in the grant anticipation fund at the end of a state fiscal year does not revert to the state general fund.**

**(d) The department may use the money in the grant anticipation fund only to pay the following costs:**

**(1) The cost of construction or reconstruction of a highway improvement project.**

**(2) The cost of acquisition of all land, rights-of-way, property, rights, easements, and any other legal or equitable interests acquired by the department for the construction or reconstruction of a highway improvement project, including the cost of any relocations incident to the acquisition.**

**(3) The cost of demolishing or removing any buildings, structures, or improvements on property acquired by the department for the construction or reconstruction of a highway improvement project.**

**(4) Engineering and legal expenses and the costs of plans, specifications, surveys, estimates, and any necessary feasibility studies.**

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(5) Payment of rentals and performance of other obligations under contracts or leases relating to highway improvement projects securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7. However, amounts in the grant anticipation fund may not be pledged to such payments.

(e) A holder of grant anticipation revenue bonds or notes issued under IC 8-14.5-7 may not compel the payment of federal transportation revenues to the department.

SECTION 8. IC 8-14.5-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. "Bonds" refers to bonds of the authority issued under IC 8-14.5-6 or IC 8-14.5-7.

SECTION 9. IC 8-14.5-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. "Notes" refers to notes of the authority issued under IC 8-14.5-6 or IC 8-14.5-7 and includes any evidences of indebtedness of the authority except bonds.

SECTION 10. IC 8-14.5-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The department shall pay lease rentals for leases entered into under this chapter and securing bonds issued under IC 8-14.5-6 from revenues transferred to the state highway road construction and improvement fund or the crossroads 2000 fund before making any other disbursements from those revenues: funds. The department shall pay lease rentals for leases entered into under this chapter and securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7 from federal transportation revenues (as defined in IC 8-14.5-7-1) transferred to the grant anticipation fund before making any other disbursements from the grant anticipation fund.

SECTION 11. IC 8-14.5-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **Chapter 7. Grant Anticipation Revenue Bonds and Notes**

**Sec. 1.** As used in this chapter, "federal transportation revenues" means:

- (1) money and obligation authority apportioned or allocated, or anticipated to be apportioned or allocated in the current federal fiscal year or a future federal fiscal year, to the state by the United States Department of Transportation under 23 U.S.C., as amended, for use on a project; or
- (2) other federal money that may be used for a project and is available or anticipated to be available in the current federal fiscal year or a future federal fiscal year.

**Sec. 2.** As used in this chapter, "grant anticipation revenue

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bond" or "grant anticipation revenue note" means a bond or note, respectively, secured by lease rentals relating to highway improvement projects and anticipated to be paid from federal transportation revenues deposited in the grant anticipation fund.

Sec. 3. As used in this chapter, "highway improvement project" means a project for which the department may use federal transportation revenues.

Sec. 4. The authority may, by resolution, issue grant anticipation revenue bonds or notes for any purpose that is authorized by IC 8-14.5-6 and for which the department may use federal transportation revenues. When issuing grant anticipation revenue bonds or notes, the authority is subject to the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes.

Sec. 5. (a) Before grant anticipation revenue bonds or notes may be issued under this chapter, the department shall prepare a revenue declaration providing a specified amount or percentage of federal transportation revenues received by the state during a state fiscal year to be deposited in the grant anticipation fund and the number of years those deposits shall be made. A revenue declaration prepared under this section is subject to approval of the budget agency and the authority.

(b) The total amount of lease rentals securing grant anticipation revenue bonds or notes issued under IC 8-14.5-7 and scheduled to be paid during any state fiscal year, determined as of the date of issuance of each series of grant anticipation revenue bonds or notes, may not exceed an amount equal to fifty percent (50%) of the remainder of:

(1) the total amount of federal transportation revenues apportioned or allocated to the department during the federal fiscal year immediately preceding the state fiscal year in which the series of bonds or notes is issued; minus

(2) seven hundred thirty-four million eight hundred fifty thousand three hundred ninety dollars (\$734,850,390), which is the total amount of federal transportation revenues apportioned or allocated to the department during the federal fiscal year beginning October 1, 2003, and ending September 30, 2004.

(c) All other provisions of IC 8-14.5-6 apply to the issuance of grant anticipation revenue bonds or notes under this chapter.

Sec. 6. Grant anticipation revenue bonds or notes:

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- (1) constitute the corporate obligations of the authority;
- (2) do not constitute an indebtedness of the state within the meaning or application of any constitutional provision or limitation; and
- (3) are payable solely as to both principal and interest from:
  - (A) the revenues from a lease to the department, if any;
  - (B) proceeds of bonds or notes, if any; or
  - (C) investment earnings on proceeds of bonds or notes, if any.

SECTION 12. IC 8-14.6 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **ARTICLE 14.6. LEASE FINANCING FOR LOCAL ROAD PROJECTS**

##### **Chapter 1. Legislative Findings of Fact**

**Sec. 1.** The general assembly makes the following findings of fact:

- (1) That there exists in Indiana's cities, towns, and counties a need for construction, acquisition, reconstruction, improvement, and extension of local roads in order to provide for the public welfare and safety by providing safe, dependable, and reliable local roads for vehicular traffic.
- (2) That the development and maintenance of the economy of Indiana's cities, towns, and counties requires an adequate system of local roads in order to provide for the public welfare and to facilitate the creation and maintenance of jobs, the increase and stabilization of the tax base, and the general economic welfare of cities, towns, and counties and their citizens.
- (3) That it is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.

**Sec. 2.** This article provides an additional and alternative method for doing the things authorized by this article, and is supplemental and additional to powers conferred by other laws and not in derogation of any other powers.

**Sec. 3.** This article is necessary for the welfare of Indiana's cities, towns, and counties and their inhabitants, and shall be liberally construed to effect the purposes of this article.

##### **Chapter 2. Definitions**

**Sec. 1.** The definitions in this chapter apply throughout this article.

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1        **Sec. 2. "Authority" refers to the Indiana transportation finance**  
 2        **authority established by IC 8-9.5-8-2.**

3        **Sec. 3. "Bonds" refers to bonds of the authority issued under**  
 4        **IC 8-14.6-6.**

5        **Sec. 4. "Capitalized interest" means interest cost on bonds or**  
 6        **notes before and during the period of construction of the local road**  
 7        **project for which the bonds or notes were issued, and for a period**  
 8        **not to exceed one (1) year after completion of construction.**

9        **Sec. 5. "Construction" means the construction, acquisition,**  
 10       **reconstruction, improvement, and extension of a local road project.**

11       **Sec. 6. "Costs" as applied to any local road project includes any**  
 12       **item or cost of a capital nature incurred in the construction of a**  
 13       **local road project, including:**

- 14       (1) the cost of construction;
- 15       (2) the cost of acquisition of all land, rights-of-way, property,
- 16       rights, easements, and any other legal or equitable interests
- 17       acquired by the authority for the construction, including the
- 18       cost of any relocations incident to the acquisition;
- 19       (3) the cost of demolishing or removing any buildings,
- 20       structures, or improvements on property acquired by the
- 21       authority, including the cost of:
  - 22       (A) acquiring any property to which the buildings,
  - 23       structures, or improvements may be moved; or
  - 24       (B) acquiring any property that may be exchanged for
  - 25       property acquired by the authority;
- 26       (4) financing charges;
- 27       (5) costs of issuance of bonds or notes, including costs of credit
- 28       enhancement, such as bond or note insurance;
- 29       (6) remarketing or conversion fees;
- 30       (7) bond or note discount;
- 31       (8) capitalized interest;
- 32       (9) the cost of funding any reserves to secure the payment of
- 33       bonds or notes;
- 34       (10) engineering and legal expenses, costs of plans,
- 35       specifications, surveys, estimates, and any necessary
- 36       feasibility studies;
- 37       (11) other expenses necessary or incident to determining the
- 38       feasibility or practicability of constructing any local road
- 39       project;
- 40       (12) administrative expenses of the authority or one (1) or
- 41       more local units relating to any local road project financed by
- 42       bonds or notes;

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(13) reimbursement of one (1) or more local units for:

(A) any cost, obligation, or expense incurred by the local unit or units relating to a local road project;

(B) advances relating to a local road project from the local unit or units to the authority for surveys, borings, preparation of plans and specifications, or engineering services; or

(C) any other cost of construction incurred by the local unit or units or paid from advances; and

(14) other expenses the authority finds necessary or incident to the construction of the local road project, the financing of the construction, and the placing of the local road project in operation.

Sec. 7. "Local road project" means any:

(1) road;

(2) street;

(3) motorway;

(4) bridge;

(5) tunnel;

(6) overpass;

(7) underpass;

(8) interchange;

(9) entrance;

(10) approach; or

(11) other public way;

that is part of the arterial road system, local county roads, arterial street system, or local streets for a local unit for purposes of IC 8-14-2. The term includes all land, rights-of-way, property, rights, easements, materials, and legal or equitable interests necessary for the construction of the local road project.

Sec. 8. "Local unit" means a city, town, or county acting through its fiscal body (as defined in IC 36-1-2-6).

Sec. 9. "Notes" refers to notes of the authority issued under IC 8-14.6-6 and includes any evidences of indebtedness of the authority except bonds.

Sec. 10. "Property owner" means all individuals, copartnerships, associations, governmental units or entities, corporations, limited liability companies, or other legal entities having any title or interest in any land, rights-of-way, property, rights, easements, or legal or equitable interests that may be acquired by the authority.

Sec. 11. "Weighted average life" of an issue of bonds or notes

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means:

- (1) the sum of the products of the face amount of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory sinking fund redemptions); divided by
- (2) the face amount of the entire issue of bonds or notes.

Sec. 12. "Weighted average useful life" of a local road project or local road projects means:

- (1) the sum of the products of the cost of each asset comprising the local road project or local road projects and the useful life of the respective asset; divided by
- (2) the total cost of all the assets comprising the local road project or local road projects.

For purposes of this computation, the useful life of land is fifty (50) years. The useful life of all other assets comprising the local road project shall be conclusively evidenced by a certificate of the local unit, supported by a statement from the local unit's consulting engineer. The weighted average useful life of any local road project shall be determined as of the later of the date on which the local road project is expected to be placed in service and the date on which the bonds or notes are issued.

### Chapter 3. General Provisions

Sec. 1. The authority shall contract with one (1) or more local units for construction, ownership, maintenance, and operation of local road projects.

Sec. 2. The authority shall finance local road projects in accordance with this article.

Sec. 3. The authority may exercise any powers provided under this article in participation or cooperation with any governmental entity and enter into any contracts to facilitate that participation or cooperation without compliance with any other statute. This article constitutes complete authority for the authority to carry out its powers and duties under this article. No law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by the authority or any other officer, department, agency, or instrumentality of the state or any political subdivision are required for the authority to carry out its powers and duties, except as prescribed in this article.

Sec. 4. The authority may pay the cost of construction of a local road project from any funds available to the authority under this article or any other law.

Sec. 5. The authority may sell, transfer, lease, or otherwise

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1 convey any land, rights-of-way, property, rights, easements, or  
 2 legal or equitable interest it considers necessary or convenient for  
 3 carrying out this article, including disposal of unused or surplus  
 4 property.

5 Sec. 6. The authority may acquire by purchase, whenever it  
 6 considers a purchase expedient, any land, rights-of-way, property,  
 7 rights, easements, or other legal or equitable interests it considers  
 8 necessary or convenient for the construction and operation of any  
 9 local road project. A purchase under this section shall be made  
 10 upon the terms and at the price agreed upon between the authority  
 11 and the property owner.

12 Sec. 7. The authority may make and enter into all contracts and  
 13 agreements necessary or incidental to the performance of its duties  
 14 and the execution of its powers under this article or any other law.  
 15 These contracts or agreements are not subject to any approvals  
 16 other than the approval of the authority and may be for any term  
 17 of years and contain any terms considered reasonable by the  
 18 authority.

19 Sec. 8. The authority may employ and fix the compensation of  
 20 financial advisors and underwriters, bond counsel, other attorneys  
 21 with the approval of the attorney general, and other employees,  
 22 independent contractors, and agents as necessary in its judgment  
 23 to carry out this article. The authority is subject to the provisions  
 24 of 25 IAC 5 concerning equal opportunities for minority business  
 25 enterprises and women's business enterprises to participate in  
 26 procurement and contracting processes.

27 Sec. 9. The authority may accept gifts, devises, bequests, grants,  
 28 appropriations, revenue sharing, other financing and assistance,  
 29 and any other aid from any source and agree to and comply with  
 30 conditions attached to the aid.

31 Sec. 10. The authority may accept the transfer of any local road  
 32 project to the authority.

33 Sec. 11. (a) Except as provided in subsection (b), the authority  
 34 may, in the manner provided by IC 8-23-7, acquire by  
 35 appropriation any land, rights-of-way, property, rights, easements,  
 36 or other legal or equitable interests necessary or convenient for the  
 37 construction or the efficient operation of any local road project.  
 38 However, compensation for the property taken shall first be made  
 39 in money as provided by law.

40 (b) The authority may take or disturb property or facilities that:

41 (1) belong to any public utility or to a common carrier  
 42 engaged in interstate commerce;

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(2) are required for the proper and convenient operation of the public utility or common carrier; and

(3) are not located within the limits of local road projects being constructed under this article;

only if provision is made for the restoration, relocation, or duplication of the property or facilities elsewhere at the cost of the authority.

Sec. 12. The authority may do all things necessary or proper to carry out this article.

Sec. 13. A local unit may convey, transfer, lease, or sell, with or without consideration, real property of any nature (including buildings, structures, improvements, land, rights-of-way, easements, and legal or equitable interests), title to which is held in the name of the local unit, to the authority, without being required to advertise or solicit bids or proposals, in order to accomplish the governmental purposes of this article.

Sec. 14. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments of the state or any political subdivision of the state.

#### Chapter 4. Contracts With Local Units

Sec. 1. The authority is responsible for the construction, leasing, and ownership of local road projects. With respect to each local road project, the authority and one (1) or more local units may enter into a contract for the purposes set forth in this chapter. If the authority and the local unit or units decide to enter into a contract under this chapter, the authority and the local unit or units may enter into a separate contract for each local road project or a master contract for several local road projects.

Sec. 2. A contract under this chapter must:

(1) provide for the construction and ownership of the local road project; and

(2) describe the local road project or local road projects, setting forth in general terms principal features such as geographic location, widths of rights-of-way, number of lanes in each direction, width of traffic lanes, widths of shoulders, and location and nature of tunnels, overpasses, underpasses, interchanges, bridges, approaches, and connecting roads, streets, and highways.

Sec. 3. The contract may include the following:

(1) Provisions for payment by the authority to the local unit or units of all costs incurred by the local unit or units in the

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performance of the contracts, including all costs of construction, salaries, wages, and associated costs of personnel attributable to performance of the contract.

(2) Other terms and conditions that the authority and the local unit or units consider appropriate.

Sec. 4. Notwithstanding any other law, a local unit may enter into a contract with the authority by negotiating the contract with the authority and without complying with the requirements of any other law. A local unit shall observe any existing contractual commitments to the holders of bonds or notes or other persons when entering into a contract.

#### Chapter 5. Leases With Local Units

Sec. 1. (a) In addition to its other powers, one (1) or more local units may enter into a lease or leases with the authority under section 2 or 3 of this chapter for any or all of the purposes set forth in this article. Notwithstanding any other law, a local unit may enter into a lease with the authority by negotiating the lease with the authority and without complying with the requirements of any other law. A local unit shall observe any existing contractual commitments to the holders of bonds or notes or other persons when entering into a lease.

(b) The authority has all the powers necessary and incidental to carry out the terms and conditions of leases under this chapter.

(c) If the authority and one (1) or more local units decide to enter into a lease under this chapter, the authority and the local unit or units may enter into a separate lease for each local road project or may enter into one (1) or more master leases for several local road projects.

Sec. 2. (a) A lease entered into under this section must include the following:

(1) A statement that the term of the lease is for a period coextensive with the biennium used for state budgetary and appropriation purposes with a fractional period when the lease begins, if necessary.

(2) A statement that the term of the lease is extended from biennium to biennium, with the extensions not to exceed a lease term of twenty-five (25) years, unless either the authority or the local unit or units give notice of nonextension at least six (6) months before the end of a biennium, in which event the lease expires at the end of the biennium in which the notice is given.

(3) A provision plainly stating that the lease does not

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constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely from the sources described in section 6 of this chapter, for the actual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(4) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full:

(A) the debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority; and

(B) additional rent as provided by the lease; subject to the appropriation of money by the local unit or units to pay lease rentals.

(5) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(6) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rent payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

(c) The fiscal officer (as defined in IC 36-1-2-7) of the local unit shall request an appropriation from the local unit for payment of lease rentals on any lease entered into under this section in writing at a time sufficiently in advance of the date for payment of the lease rentals so that an appropriation may be made in the normal budgetary process of the local unit.

Sec. 3. (a) A lease entered into under this section must include the following:

(1) The term of the lease, which may not exceed the weighted

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average useful life of the local road project or local road projects.

(2) A provision plainly stating that the lease does not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation, and that lease rentals are payable by the local unit or units solely for the annual use or availability for use of local road projects provided by the authority, with payment commencing not earlier than the time the use or availability commences.

(3) Provisions requiring the local unit or units to pay rent at times and in amounts sufficient to pay in full the following:

(A) The debt service payable under the terms of any bonds or notes issued by the authority and outstanding with respect to any local road project, including any required additions to reserves for the bonds or notes maintained by the authority.

(B) Additional rent as provided by the lease.

(4) Provisions requiring the local unit or units to operate and maintain the local road project or local road projects during the term of the lease.

(5) A provision in each master lease for two (2) or more local road projects requiring that each local road project added to the master lease shall be covered by a supplemental lease describing the particular local road project, stating the additional rent payable and providing that all lease covenants, including the obligation to pay the original and additional rent under any supplement, shall be unitary and include all local road projects covered, whether by the master lease or a supplemental lease.

(b) A lease entered into under this section may contain other terms and conditions that the authority and the local unit or units consider appropriate.

**Sec. 4.** If a local unit fails at any time to pay to the authority when due any lease rentals on any lease under this chapter, the chairman of the authority shall immediately report the unpaid amount in writing to the general assembly and the governor.

**Sec. 5.** A local unit or units may lease any property under its control to the authority for construction of a local road project, which local road project may be leased to the local unit or units.

**Sec. 6. (a)** A local unit shall pay lease rentals for leases entered into under this chapter from revenues from any combination of the

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following sources:

(1) Money payable to the local unit from the motor vehicle highway account.

(2) Money payable to the local unit from the local road and street account.

(3) Revenues from the county motor vehicle excise surtax.

(4) Revenues from the county wheel tax.

(5) Federal transportation revenues apportioned or allocated to the state and distributed to the local unit by the Indiana department of transportation.

(6) Any other source of revenues (other than property taxes) that is legally available to the local unit.

(b) A local unit may, in the manner provided by IC 5-1-14-4, pledge the revenues described in this section for the payment of lease rentals. However, in making a pledge the local unit shall not commit money required to provide adequate funding for other local road needs.

Sec. 7. If a local unit pledges money from the motor vehicle highway account or the local road and street account, or both, for the payment of lease rentals for leases entered into under this chapter, the local unit shall immediately provide the auditor of state with a written notice setting forth the terms of the pledge and directing the auditor of state to:

(1) withhold the amounts pledged from the distributions that are otherwise payable to the local unit under IC 8-14-1-3 or IC 8-14-2-4, or both; and

(2) pay the amounts withheld to the authority.

Notwithstanding IC 8-14-1-3 and IC 8-14-2-4, the auditor of state shall withhold and pay to the authority the amounts specified in the notice.

Sec. 8. Notwithstanding any other provision of law, to the extent that any department or agency of the state, including the treasurer of state, is the custodian of money payable to a local unit (other than for goods or services provided by the local unit), at any time after written notice to the department or agency head from the authority that the local unit is in default on the payment of lease rentals for a lease entered into under this chapter, the department or agency shall withhold the payment of that money from the local unit and pay over the money to the authority for the purpose of paying the lease rentals.

Sec. 9. The requirements of sections 7 and 8 of this chapter to withhold amounts due under a lease do not create a debt of the

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state or a local unit for purposes of the Constitution of the State of Indiana.

**Chapter 6. Issuance of Bonds and Notes**

**Sec. 1.** Subject to the other provisions of this chapter, and before July 1, 2008, the authority shall, by resolution, issue and sell bonds or notes of the authority to provide funds to carry out this article with respect to the construction of a local road project or local road projects or the refunding of any bonds or notes, together with any reasonable costs associated with a refunding.

**Sec. 2.** Before the issuance of bonds or notes, the authority must receive the approval of the budget agency.

**Sec. 3. (a)** The construction of a local road project may not be financed under this article, if at the time the lease with respect to the local road project is initially entered into, the weighted average useful life of the local road project is less than five (5) years.

**(b)** For purposes of this section and section 5 of this chapter, a certificate of the local unit, supported by a statement from the local unit's consulting engineer, as to the weighted average useful life of the local road project is conclusive with respect to the matters contained in the certificate.

**(c)** If any bonds or notes bear interest at a variable or adjustable rate, lease rentals under any lease or leases attributable to debt service shall be fixed over the term of the lease or leases based on the fair and reasonable value of the local road project or local road projects leased.

**Sec. 4. (a)** Before issuing a series of bonds or notes, the authority shall publish a notice of its determination to issue the bonds or notes. The notice shall be published:

(1) one (1) time in two (2) newspapers published and of general circulation in the city of Indianapolis; and

(2) one (1) time in one (1) newspaper published and of general circulation in each local unit that proposes to enter into a lease of the local road projects to be financed by the bonds or notes.

**(b)** No action to contest the validity of:

(1) any contract entered into by one (1) or more local units and the authority before the bonds or notes are issued;

(2) any lease entered into by one (1) or more local units and the authority before the bonds or notes are issued to secure a series of bonds or notes; or

(3) a series of bonds or notes issued by the authority;

may be brought against the authority after the fifteenth day

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1 following publication of the notice required by subsection (a)(1) or  
 2 against a local unit after the fifteenth day following publication of  
 3 the notice under subsection (a)(2).

4 (c) If a lease or contract is entered into under this chapter after  
 5 bonds or notes relating to the lease or contract are issued, the  
 6 authority may publish notice of execution of the lease or contract  
 7 as set forth in subsection (a). No action against the authority to  
 8 contest the validity of such a lease or contract may be brought after  
 9 the fifteenth day following publication of the notice under  
 10 subsection (a)(1) or against a local unit after the fifteenth day  
 11 following publication of the notice under subsection (a)(2).

12 (d) If an action against the authority or a local unit challenging  
 13 a lease, a contract, bonds, or notes is not brought within the time  
 14 prescribed by this section, the lease, contract, bonds, or notes shall  
 15 be conclusively presumed to be fully authorized and valid under  
 16 Indiana law and any person or entity is estopped from further  
 17 questioning the authorization, validity, execution, delivery, or  
 18 issuance of the contract, lease, bonds, or notes.

19 **Sec. 5. (a) The bonds or notes must indicate on their face:**

- 20 (1) the maturity date or dates, as determined under subsection
- 21 (b);
- 22 (2) the interest rate or rates (whether fixed, variable, or a
- 23 combination of fixed and variable) or the manner in which the
- 24 interest rate or rates will be determined if variable or
- 25 adjustable rates are used;
- 26 (3) registration privileges and place of payment, including
- 27 provisions for book entry obligations as set forth in IC 5-1-15;
- 28 (4) the conditions and terms under which the bonds or notes
- 29 may be redeemed or prepaid before maturity; and
- 30 (5) the source of payment as set forth in section 10 of this
- 31 chapter.

32 (b) The weighted average life of the bonds or notes may not  
 33 exceed the sum of:

- 34 (1) the weighted average useful life of the local road project or
- 35 local road projects to be financed from the proceeds of the
- 36 bonds or notes; plus
- 37 (2) the period of construction of the local road project or local
- 38 road projects.

39 **Sec. 6. The bonds or notes:**

- 40 (1) shall be executed by the manual or facsimile signature of
- 41 the chairman or vice chairman of the authority;
- 42 (2) shall be attested by the manual or facsimile signature of

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the secretary-treasurer or assistant secretary-treasurer of the authority;

(3) shall be imprinted or impressed with the seal of the authority by any means;

(4) may be authenticated by a trustee, registrar, or paying agent; and

(5) constitute valid and binding obligations of the authority, even if the chairman, vice chairman, secretary-treasurer, or assistant secretary-treasurer whose manual or facsimile signature appears on the bonds or notes no longer holds that office.

Sec. 7. The bonds or notes, when issued, have all the qualities of negotiable instruments, subject to provisions for registration, under IC 26 and are incontestable in the hands of a bona fide purchaser or owner of the bonds or notes for value.

Sec. 8. The bonds or notes may be sold by the authority at a public or negotiated sale at a time or times determined by the authority and at a premium or discount as determined by the authority. In determining the amount of bonds or notes to be issued and sold, the authority may include the costs of construction or of refunding bonds or notes, including reasonable debt service reserves, and all other expenses necessary or incident to the construction of the local road project, a refunding, or the issuance of the bonds or notes.

Sec. 9. The proceeds of the bonds or notes are appropriated for the purpose for which the bonds or notes may be issued and the proceeds shall be deposited and disbursed in accordance with any provisions and restrictions that the authority may provide in the resolution or trust agreement authorizing the issuance of the bonds or notes. The maturities of the bonds or notes, the rights of the owners, and the rights, duties, and obligations of the authority are governed in all respects by this article and the resolution or trust agreement.

Sec. 10. The bonds or notes:

(1) constitute the corporate obligations of the authority;

(2) do not constitute an indebtedness of the state or any local unit within the meaning or application of any constitutional provision or limitation; and

(3) are payable solely as to both principal and interest from:

(A) the revenues from a lease to one (1) or more local units, if any;

(B) proceeds of bonds or notes, if any; or

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1 (C) investment earnings on proceeds of bonds or notes.

2 Sec. 11. The provisions of this article and the covenants and  
3 undertakings of the authority as expressed in any proceedings  
4 preliminary to or in connection with the issuance of the bonds or  
5 notes may be enforced, subject to the provisions of any resolution  
6 or trust agreement, by a bond or note owner by action for  
7 injunction or mandamus against the authority or any officer,  
8 agent, or employee of the authority. However, no action for  
9 monetary judgment may be brought against the state for any  
10 violations of this article or for payment of the bonds or notes of the  
11 authority.

12 Sec. 12. All bonds or notes issued under this article are issued by  
13 a body corporate and politic of the state, but not a state agency,  
14 and for an essential public and governmental purpose. The bonds  
15 and notes, the interest on the bonds and notes, the proceeds  
16 received by an owner from the sale of the bonds or notes to the  
17 extent of the owner's cost of acquisition, the proceeds received  
18 upon redemption for maturity, the proceeds received at maturity,  
19 and the receipt of the interest and proceeds are exempt from  
20 taxation for all purposes except the financial institutions tax  
21 imposed under IC 6-5.5 or a state inheritance tax imposed under  
22 IC 6-4.1.

23 Sec. 13. Notwithstanding any other law, all financial institutions,  
24 investment companies, insurance companies, insurance  
25 associations, executors, administrators, guardians, trustees, and  
26 other fiduciaries may legally invest sinking funds, money, or other  
27 funds belonging to them or within their control in bonds or notes  
28 issued under this chapter.

29 Sec. 14. Bonds or notes issued under this chapter are exempt  
30 from the registration requirements of IC 23-2-1 and any other state  
31 securities registration statutes.

32 Sec. 15. A pledge of lease rentals, proceeds of bonds or notes,  
33 investment earnings on those proceeds, or other money pledged by  
34 the authority is binding from the time the pledge is made. Lease  
35 rentals, proceeds of bonds or notes, investment earnings on those  
36 proceeds, or other money pledged by the authority and thereafter  
37 received by the authority or its trustee or fiduciary is immediately  
38 subject to the lien of the pledge without any further act, and the  
39 lien of the pledge is binding against all parties having claims of any  
40 kind in tort, contract, or otherwise against the authority,  
41 regardless of whether the parties have notice of the lien. A  
42 resolution, trust agreement, or any other instrument by which a

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pledge is created is required to be filed or recorded only in the records of the authority.

Sec. 16. The authority may obtain from a department or an agency of the state or of the United States, or from a nongovernmental insurer, available insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal, or any debt service reserve funds, on bonds or notes issued by the authority, or on securities purchased or held by the authority.

Sec. 17. The authority may enter into agreements with an entity to provide credit enhancement or liquidity support for any bonds or notes issued by the authority, or for any debt service reserves securing any bonds or notes, with terms that are reasonable and proper, in the discretion of the authority, and not in violation of law. The authority may execute and deliver notes to evidence its obligation to make payments under such an agreement, but these notes must conform to this article in all respects.

Sec. 18. The authority may enter into agreements or contracts with any financial institution as may be necessary, desirable, or convenient in the opinion of the authority for rendering services in connection with:

- (1) the care, custody, or safekeeping of securities or other investments held or owned by the authority;
- (2) the payment or collection of amounts payable as to principal or interest; and
- (3) the delivery to the authority of securities or other investments purchased or sold by it.

The authority may also, in connection with any of the services rendered by a financial institution as to custody and safekeeping of its securities or investments, require security in the form of collateral bonds, surety agreements, or security agreements as, in the opinion of the authority, is necessary or desirable.

Sec. 19. (a) In the discretion of the authority, any bonds and notes issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Indiana. Such a trust agreement may also provide for a cotrustee, which may be any trust company or bank in Indiana or another state.

(b) The trust agreement or the resolution providing for the issuance of the bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the owners of

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bonds or notes as may be reasonable and proper, in the discretion of the authority, and not in violation of law.

(c) The trust agreement or resolution may set forth the rights and remedies of the owners of any bonds or notes of the trustee and may restrict the individual right of action by the owners.

(d) Any trust agreement or resolution may contain other provisions that the authority considers reasonable and proper for the security of the owners of bonds or notes.

(e) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from money pledged or assigned to the payment of the principal of and interest on bonds or notes or from any other funds available to the authority.

Sec. 20. The authority may purchase bonds or notes of the authority out of its funds or money available for the purchase of its own bonds or notes. The authority may hold, cancel, or resell the bonds or notes subject to, and in accordance with, agreements with owners of its bonds or notes. Unless canceled, bonds or notes so held shall be considered to be held for resale or transfer, and the obligation evidenced by the bonds or notes shall not be considered to be extinguished.

Sec. 21. Funds or money held by the authority under any trust agreement or resolution may be invested pending disbursement as provided in the trust agreement or the resolution. Such an investment is not restricted by or subject to the provisions of any other law.

#### Chapter 7. Reserve Fund for Bonds and Notes

Sec. 1. (a) The authority may establish and maintain a reserve fund for each issue of bonds or notes in which there shall be deposited or transferred:

(1) all money appropriated by the general assembly for the purpose of the fund in accordance with section 3(a) of this chapter;

(2) all proceeds of bonds or notes required to be deposited in the fund under the terms of:

(A) a contract between the authority and the holders of the bonds or notes; or

(B) a resolution of the authority with respect to the proceeds of bonds or notes;

(3) all other money appropriated by the general assembly to a reserve fund; and

(4) any other money or funds of the authority that it decides to deposit in the fund.

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(b) Subject to section 3(b) of this chapter, money in any reserve fund shall be held and applied solely to the payment of the interest on and principal of bonds or notes of the authority as the interest and principal become due and payable and for the retirement of bonds or notes. The money may not be withdrawn if a withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds or notes and the principal of bonds or notes then maturing and payable, whether by reason of maturity or mandatory redemption, for which payments other money of the bank is not then available. As used in this chapter, "required debt service reserve" means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution or trust agreement of the authority.

(c) Money in any reserve fund that exceeds the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds or notes.

Sec. 2. For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution or trust agreement of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the money or investments in the reserve fund.

Sec. 3. (a) In order to assure the maintenance of the required debt service reserve in any reserve fund, the general assembly may annually appropriate to the authority for deposit in one (1) or more of the funds the sum, certified by the authority to the general assembly, that is necessary to restore one (1) or more of the funds to an amount equal to the required debt service reserve. Before December 1 of each year, the authority shall make and deliver to the general assembly a certificate stating the sum required to restore the funds to that amount. Nothing in this subsection creates a debt or liability of the state to make any appropriation.

(b) All amounts received on account of money appropriated by the state to any reserve fund shall be held and applied in accordance with section 1(b) of this chapter. However, at the end of each fiscal year, if the amount in any reserve fund exceeds the required debt service reserve, any amount representing earnings or income received on account of any money appropriated to the reserve fund that exceeds the expenses of the authority for that

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1       fiscal year may be transferred to the state general fund.

2       **Sec. 4. Subject to the provisions of any agreement with its**  
3       **holders, the bank may combine a reserve fund established for an**  
4       **issue of bonds or notes into one (1) or more reserve funds.**

5       SECTION 13. IC 8-23-3-11 IS ADDED TO THE INDIANA CODE  
6       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7       1, 2005]: **Sec. 11. Notwithstanding any other provision of this**  
8       **chapter, if grant anticipation revenue bonds or notes have been**  
9       **issued under IC 8-14.5-7, the department shall collect or cause to**  
10      **be collected federal transportation revenues (as defined in**  
11      **IC 8-14.5-7-1) and shall, as provided by the department in the**  
12      **revenue declaration relating to the issuance of the grant**  
13      **anticipation revenue bonds or notes, deposit or cause to be**  
14      **deposited the specified part of the federal transportation revenues**  
15      **in the grant anticipation fund.**

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